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November 2, 2015

National Energy Board
517 Tenth Avenue SW
Calgary, AB T2R 0A8

Attn: Sheri Young, Secretary of the Board

Re Energy East Pipeline Review Process

On September 9, 2015, I wrote to you expressing my concerns with respect to the federal government's approach to Crown consultations for the Energy East Pipeline Project ("Project") and the National Energy Board ("NEB") review process.

In that letter I expressed deep concern with the following:

- The lack of a mutually developed consultation process in which decisions are made unilaterally and arbitrarily;
- The willingness of the NEB to make important decisions prior to having a complete application before them;
- The specific decision of the NEB to cap participant funding at $40,000 per intervener after representing to the public at large that this cap would be $80,000 and requesting applications on that basis; and
- The inevitable problems that would result in terms of presenting evidence and participating in the hearing in a meaningful way.

In that letter, I proposed meetings between NRCan, the NEB, TransCanada and affected Aboriginal intervenors in order to develop a consultation process and adequate funding mechanisms, and until such meetings occur, that the current flawed process be halted. To date, only TransCanada has responded and has declined to participate in any such meetings. They state that the duty to consult and accommodate lies with the Crown. Rather than respond to our concerns and meet this duty, the NEB has moved forward in what can only be viewed as the attempt to streamline the Project approval process and minimize Aboriginal involvement. In addition to the concerns outlined above, there are additional problems that must be addressed.

Oral Traditional Evidence/ Written Hearing

The NEB is moving forward with its plans to collect "Oral Traditional Evidence" from Aboriginal participants. They intend to do so under arbitrary and unilaterally imposed timelines. Asking

elders to testify under such limited time frames is not only disrespectful, but practically ensures that the NEB's decision will be made upon an inadequate evidentiary record.

Further, the NEB has indicated that if a Hearing Order is issued for this matter, the Board intends to have a written hearing. The practical result of this is to allow the proponent to engage in oral cross-examination of the elders providing traditional evidence, while confining Aboriginal intervenors to the information request process if they wish to test the proponents evidence.

We object to any process that does not allow for oral cross-examination of the Proponent at some point. Even if the information request process can answer the bulk of the questions, cross-examination is necessary to ensure that the Participants have the ability to have all their questions answered in satisfactory detail. The lack of oral cross-examination of the Proponent creates serious concerns about accountability and transparency. At the very least, the Crown's obligations to First Nations include ensuring that the First Nation's questions are answered.

Pipeline Conversion Excluded from Review

In its present form the Proponent's application appears to exclude the conversion of the pipeline itself from the project and instead classifies it as routine operation and maintenance of the gas line. The conversion of the pipeline will involve significant on the ground work which will involve disruption of all the areas along the pipeline and potentially impact our rights. It is concerning that this issue is still undetermined because the Proponent's application is as yet not complete. It is therefore not yet clear what the scope of the Project the NEB will be considering.

Potential Ramifications

If the NEB is intent in proceeding in this manner, than it raises serious questions as to the legitimacy of the final decision that will be made with respect to the Project. The current process is on shaky legal ground for the following reasons:

- The Crown's obligation to consult and accommodate affected First Nations will not be met as they are entitled to an adequate consultation process that ensures meaningful participation;
- The NEB is making important decisions with respect to funding levels and the form of public hearing (written vs. oral) prior to receiving a completed application and in a manner which arguably fetters its discretion;
- The process for gathering "Oral Tradition Evidence" is procedurally unfair as it arbitrarily caps the amount of evidence that can be provided and when coupled with the likely decision to hold a written hearing, exposes only one group of parties to oral cross-examination on their evidence.

Considering that these problems are not isolated, but apply to each and every one of the over 100 approved Aboriginal intervenors in this hearing, it is not hard to envision the breadth and scope of the court challenges that will result at the end of this road.

Rather than continue down that road, I would respectfully reiterate our request for meetings between NRCan, the NEB, and TransCanada, so that we might design a process that better reflects the constitutional duties owed to Aboriginal peoples and allows the NEB to evaluate the Project from an informed position.

Attached to this letter is the signed contribution funding agreement. It is only under protest and to avoid having our non-participation used against us, that we now sign it. It is without prejudice to our position that the process is inadequate and a more fulsome one with proper funding should be designed. It is our hope and expectation that the concerns outlined above will be substantially addressed, and we look forward to participating in those discussions.

Respectfully,

Chris Sackaney - Council & Lands and Resources
For:

Chief David Babin

cc. Russell Girling, TransCanada